

UNREPORTABLE

IN THE HIGH COURT OF DELHI AT NEW DELHI

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WP(C).No.90/2007

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Date of Decision : August 17, 2007

#Hawaldar M.T. Mohan Singh

Petitioner

! Through: **Mr. D.S. Kauntae, Advocate.**

Versus

\$ UNION OF INDIA & ORS.

Respondents

^ Through: **Mr. Ashwani Bhardwaj, Advocate.**

CORAM: -

*** HON'BLE MR. JUSTICE T.S. THAKUR**

*** HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

Per S.N. AGGARWAL, J.

The petitioner joined the service in the Army as a Driver in Army Supply Corps on 10.08.1979. He was promoted to the rank of Hawaldar w.e.f 12.05.1997. He was given extension of two years up to 31.08.2005 as per revised Policy of the Government contained in its Notification dated 03.09.1998. After he retired from service, he filed a statutory petition

addressed to the Chief of the Army Staff and had prayed for reconsideration of his case for grant of promotion from Hawaldar to the rank of Naib Subedar. His said statutory petition was rejected by the Competent Authority vide impugned order dated 20.11.2006 (Annexure P-9). The relevant portion of the impugned order rejecting the request of the petitioner for reconsideration of his case for grant of promotion to the rank of Naib Subedar is reproduced hereinbelow:-

“3. Your case for promotion to Nb Sub came up in your own turn based on your seniority in Havildar. Your case considered for promotion to the rank of Nb Sub by the Departmental Promotion Committee held on 29 Jun 2004. The DPC found that you have crossed the upper age limit of 44 years for promotion to the rank of JCO in terms of para 149 (a) and (b) of Regulation for the Army 1987 as amended vide para 2 (c) of the Government of India, Ministry of Defence letter NO. F.14(3)/98/D(AG) dated 04th March 1999. Thus you were correctly declared unfit by the DPC for promotion to the rank of Nb Sub due to

over age w.e.f. 01 Jan 2004. The result of the DPC was intimated to 5171 ASC Bn. (your unit) vide ASC Records (South) letter No. 2634/NS/LQ/CA-1 (Prom) dated 10 Jul 2004."

In this writ petition the petitioner has called in question his discharge from the Army service w.e.f. 31.08.2005 and also the impugned order rejecting his request for reconsideration of his case for promotion to the rank of Naib Subedar. He has also prayed for directions to the respondents to treat him as continuing in service from the date he was superannuated i.e. 31.08.2005 till the actual date he is taken back in service by the respondents.

We have heard learned counsel for the parties and have also carefully perused the record of this case.

Appearing for the petitioner Mr. Kauntae had argued that the petitioner was fully eligible for promotion to the next higher rank of Naib Subedar during the extended period of his service in view of para -9 of the Army Headquarter letter dated

14.10.1998 (Annexure P-2). Learned counsel had further argued that the respondents had ignored the Notification of the Government dated 03.09.1998 by which the Army personnel were granted extension of two years in service beyond their normal limit of service. The contention of the petitioner's learned counsel was that the petitioner was wrongly denied promotion on the ground of his over age having crossed 44 years of age by ignoring the Government's Notification and the letter of the Army Headquarter referred to above. Mr. Kauntae had also submitted that the Commanding Officer of the petitioner had himself vide his D.O. letter dated 21.12.2003 recommended his case for promotion to the next higher rank of Naib Subedar to the concerned authorities of the respondents. In this regard he placed reliance on Annexure P-4 to the writ petition. We have carefully considered all these submissions and contentions made on behalf of the petitioner but we have not been able to persuade ourselves to agree with any of these submissions.

It is apparent on a bare reading of the

impugned order dated 20.11.2006 referred above that the petitioner was duly considered for promotion to the next higher rank of Naib Subedar by the DPC held on 29.06.2004 but he was not granted promotion to the rank of JCO (Naib Subedar) in terms of para 149 (a) and (b) of Regulation for the Army 1987 as amended vide para 2 (c) of the Government of India, Ministry of Defence letter NO. F.14(3)/98/D(AG) dated 04th March 1999. The provisions of Regulation 149 (a) (b) and (C) of Regulation for the Army 1987 are relevant and are reproduced hereinbelow:-

"149. Promotions-JCOs- (a) NCOs except those given in sub para (b) below will not normally be promoted to the rank of JCO if over 40 years of age or with more than twenty-two years' service.

(b) NCOs of the undermentioned categories will not be promoted to JCO rank if over 44 years of age or with more than 25 years of service.

(i) Clerks GD, GD (SD) and Store.

(ii) Storekeeper (Storeman Technical)

(iii) Ammunition (Technicians)

Examiners.

(iv)Personal Assistants (ASC)

(v)Instructors AEC

(c) The age and service limits given in sub-paras (a) and (b) above may be waived in very exceptional cases with permission of the COAS."

The petitioner was working as a Driver and was holding the rank of Hawaldar on the date he was considered by the DPC for his promotion to the next higher rank of Naib Subedar. Admittedly on that date he was over 44 years of age. The rank he was holding on the date he was considered for promotion did not fall in any of the Sub-Clause (i) to (v) of Clause (b) of the Regulation 149 referred above. The Regulation that was applicable to the petitioner was Regulation 149 (a) according to which he was entitled for promotion to the rank of JCO if he was not over 40 years of age or with less than 22 years of service. Even if we accept the plea of Mr. Kauntae that the petitioner was entitled to get the benefit of extension of two years in view of Policy of the Government contained in its Notification dated

03.09.1998 and the letter of Army Headquarter dated 14.10.1998, still the petitioner was not eligible for promotion as he had already crossed the prescribed age limit for the purpose. The contention of the petitioner's learned counsel that in view of the Policy of the Government contained in Para-9 of the letter of the Army Headquarter dated 14.10.1998, the petitioner could have been considered for promotion even during extended period of his service, is of no consequence since the DPC which considered the case of the petitioner for promotion was admittedly held on 29.06.2004 during the extended period of service of the petitioner.

In the facts and circumstances of the case, we are of the considered view that the respondents were fully justified in rejecting the case of the petitioner for promotion to the next higher rank of Naib Subedar. There is no merit in the challenge made by the petitioner in this writ petition.

In the result, this writ petition fails and

is hereby dismissed in limini but with no order as to costs.

**S.N. AGGARWAL
(JUDGE)**

**August 17, 2007
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**T.S. THAKUR
(JUDGE)**